

**REMARKS**

**1. Preliminary Remarks**

Claims 1 to 6 are pending in this application. In the Office Action of May 5, 2006, claims 1-6 were rejected under 35 U.S.C. §102 as anticipated by the prior art.

**2. Rejection Under 35 U.S.C. §102(b)**

The Examiner has rejected pending claims 1-6 under 35 U.S.C. §102(b). No other rejections have been made. More specifically, claims 1 and 4 stand rejected as being anticipated by Hodges et al. (U.S. Patent No. 4,120,584); claims 2 and 5 stand rejected under 102(b) as being anticipated by Mack (U.S. Patent No. 3,148,275); and claims 3 and 6 stand rejected under Schipper (U.S. Patent No. 6,111,930). For the reasons set forth below, Applicants traverse the Examiner's rejections.

The Examiner asserts that Hodges anticipates claims 1 and 4 because Hodges teaches "a sample holder with a plurality of surfaces oriented at nonzero angles relative to one another." (Office Action, page 2). The Examiner cited figure 3 of Hodges as support for the rejection. However, a closer inspection of figure 3 and Hodges reveals that Hodges does not and cannot anticipate claims 1 and 4.

Figure 3 shows only one location where samples are held for analysis. "S" generally points to that location in figure 3, and the specification refers to S as "analytical surfaces." (col. 3, line 58). Figure 3 shows other planes that are at a nonzero angle to analytical surface S. For example, in figure 3, W' generally points to such a plane (more specifically, to wire samples

along such a plane). However, those planes are not part of the analytical surface S. It is clear from the Hodges specification that the analytical surface S in figure 3 is the only place where samples are placed for analysis.

The Examiner asserts that Applicants were relying on features ("analytical surfaces") that are not recited in the rejected claims. In their earlier response, Applicants were not arguing that one should impart the term "analytical surfaces" as an additional limitation into the claims. Rather, Applicants were illustrating that one attempting to analyze a sample by a technique such as X-ray diffraction analysis must place a sample "somewhere" for analysis. In figure 3 of Hodges, that "somewhere" is called an analytical surface and is referred to as S. S is a single surface and does not have a plurality of surfaces oriented at nonzero angles. By comparison, the "somewhere" used by Applicants in claims 1 and 4 is a sample holder comprising a plurality of surfaces oriented at nonzero angles relative to one another. (Application, claim 1). Sample holders having a plurality of surfaces at nonzero angles to one another are different than a single surface used for analysis. S is the only surface used as a sample holder for analysis in figure 3 of Hodges. Hodges does not disclose a sample holder with a plurality of surfaces oriented at nonzero angles relative to one another. Thus, Applicants respectfully traverse the rejections to claims 1 and 4.

The Examiner also asserts that Mack anticipates claims 2 and 5 because Mack teaches "a curved surface suitable for holding samples." (Office Action at 2). The Examiner further states that Mack can hold multiple samples because the sample holder of Mack is reusable and is used to hold multiple samples during its service life. (Office Action at 4). However, Mack does not teach holding multiple samples at a time.

One claimed feature in claims 2 and 5 is that the sample holder can hold more than one sample. One of ordinary skill in the art would understand that they may hold more than one sample at a time. Mack cannot hold more than one sample at a time. Indeed, the disadvantages of instruments based on the Mack design and other single-sample holder instruments is that after each analysis, the samples have to be changed. The apparatus and method of claims 2 and 5 overcome this disadvantage by allowing for more than one sample to be placed in a sample holder at a time.

The Examiner also asserts that Schipper anticipates claims 3 and 6 because Schipper "in addition to the 'zero degree' plane noted by the Applicant, items (10) represent additional plane surfaces within the frame." However, item (10) cannot be used to hold samples.

Item (10) is a mounting (col. 4, line 2). It is apparent from the geometry of item (10) that it cannot be used to hold samples. It appears to be a flat surface and is held perpendicular to the sample holders which are called "ring-shaped containers" and are further described as "sample rings" and are identified as item (4). (Col. 4, lines 1-2, 24). Since item (10) cannot be used to hold samples, Schipper does not disclose a sample holder comprising a frame having a multi-plane surface wherein a plurality of removable individual sample holders are disposed within the frame.

## **Conclusion**

In conclusion, the Applicants have traversed the Examiner's rejections, and therefore the Examiner's rejections should be withdrawn.

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Examiner John M. Corbett

The Commissioner is authorized to charge any required fees for this submission to Deposit Account No. 13-0017 in the name of McAndrews, Held & Malloy, Ltd.

In view of the foregoing remarks, Applicants submit that claims 1-6 are allowable. The Examiner is invited to telephone the applicants' undersigned attorney at (312) 775-8202 if any unresolved matters remain.

Respectfully submitted,



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